

memorandum

**NATIONAL LABOR RELATIONS BOARD  
OFFICE OF THE GENERAL COUNSEL**

**DATE:** March 22, 2006

**TO:** Alan B. Reichard, Regional Director  
Region 32

**FROM:** Barry J. Kearney, Associate General Counsel  
Division of Advice

**SUBJECT:** Carpenters Local 971  
(Gore Acoustics)  
Case 32-CC-1531

This case was submitted for advice, pursuant to OM-06-42, on whether the Union violated Section 8(b)(4)(i)(ii)(B) by displaying banners at two locations some distance from the jobsites of the neutral construction employer. We conclude that the charge should be dismissed, absent withdrawal, on the view that (1) the Union's conduct was not confrontational under (ii) and therefore not signal picketing under the General Counsel's theory of violation in banner cases, and (2) there is no evidence that the conduct constituted inducement or encouragement of neutral persons under (i).

The Union has a primary labor dispute with Gore, a non-union contractor working for Metcalf Builders at a jobsite in Reno, Nevada, and at a jobsite in Carson City, Nevada. On various dates the Union began displaying a large, stationary banner in each town, which was held by several persons and bearing the words in large print, "Shame on Metcalf Builders." In smaller print, the words "Labor Dispute" were in the upper corners of the banner. The banner does not mention either the Union or Gore. The banner at Carson City was held by several individuals at a busy street intersection .6 of a mile from the jobsite; at Reno the banner was held alongside a busy street near a Safeway store, approximately 1.5 miles from the jobsite. In both locations there were multiple alternate access routes to the jobsite which would not have passed by the banners. The persons holding the banners distributed handbills, when passersby asked for them, urging recipients to pressure Metcalf into hiring only contractors that compensate their employees in accordance with the labor standards set by the Nevada Labor Commissioner. The handbills also stated that, "This flyer is not intended to create any delivery or work stoppage."

We conclude that the charge should be dismissed, absent withdrawal. With regard to the 8(b)(4)(ii)(B) allegation, we conclude that the Union's banners lacked a sufficient degree of confrontation with potential customers of the neutral Metcalf to constitute (ii) restraint or coercion. In both locations the banners were located at a considerable distance from the worksite, .6 and 1.5 miles, could not be seen from any part of the job site and there were multiple alternate access routes. There is no other evidence or conduct to establish that the Union's bannering is the equivalent of picketing or other confrontational conduct that could be coercive under 8(b)(4)(ii).<sup>1</sup> In the absence of any confrontation, we further conclude that there is no merit to any argument that the banners could still be viewed as coercive because they misled the public into thinking that the Union had a primary labor dispute with Metcalf. Due to the remote locations of the banners from the worksites, the possibly misleading language of the banners would not reasonably cause third persons to keep away from the neutral premises.

With regard to the 8(b)(4)(i)(B) allegation, there was no evidence that the bannering had either the intent or the effect of inducing or encouraging a work stoppage on the part of any neutral persons. All the evidence indicates that the banners were intended as an informational appeal to potential customers of Metcalf. There was no evidence that the banners and the accompanying handbills were either intended to or had the effect of inducing a work stoppage of any neutral persons. The words of the handbill so indicated, and the bannering - not even visible from the jobsites - did not cause any neutral persons to cease performing services. Thus, there is no merit to the 8(b)(4)(i)(B) allegation.<sup>2</sup> Accordingly, the charge should be dismissed, absent withdrawal.

B.J.K.

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<sup>1</sup> See generally Chicago Typographical Union No. 16 (Alden Press, Inc.), 151 NLRB 1666, 1669 (1965) (Board dismissed 8(b)(4)(ii)(B) complaint where union's patrolling with placards naming neutral person at various shopping centers and public buildings distant from the neutral lacked element of confrontation with members of public necessary for proscribed secondary picketing).

<sup>2</sup> See, e.g., Laborers Local 332 (C.D.G., Inc.), 305 NLRB 298, 305 (1991); Carpenters Local 316 (E & E Development Co.), 247 NLRB 1247, 1248-49 (1980).